

E-FILED 11/29/06

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ZHAOYANG SUN and WEN LI,

Plaintiffs,

v.

MICHAEL CHERTOFF, et al.,

Defendants.

Case Number C 06-07151 RS
ORDER TO SHOW CAUSE

On November 17, 2006, plaintiffs Zhaoyang Sun and Wen Li, appearing through counsel, filed a “Complaint For Writ in the Nature of Mandamus” against defendants Michael Chertoff, Secretary of the Department of Homeland Security; Emilio T. Gonzales, Director of the United States Citizenship and Immigration Services (“CIS”); Christina Poulos, Acting Director of the California Service Center of the CIS; and Robert S. Mueller, Director of the Federal Bureau of Investigation.

Plaintiffs allege defendants have failed to process their I-485 applications in a timely manner, apparently as a result of delays in obtaining completed background check clearances

1 from the Federal Bureau of Investigation. Plaintiffs allege that Defendants have violated the
2 Administrative Procedures Act, 5 U.S.C § 701 et. seq., by “withholding or unreasonably
3 delaying action on the Plaintiffs’ I-485 applications and [by] fail[ing] to carry out the
4 adjudicative functions delegated to them by law.” Plaintiffs request that this Court enter an order
5 directing defendants to complete their security clearances and process their applications
6 expeditiously. Good cause therefore appearing, IT IS HEREBY ORDERED as follows:

7 (1) The Clerk of the Court shall serve by mail a copy of the complaint and a copy of
8 this Order upon counsel for Defendants, the Office of the United States Attorney. The Clerk of
9 the Court also shall serve a copy of this Order upon Plaintiffs’ counsel.

10 (2) Defendants shall, within sixty (60) days after receiving service of the complaint,
11 file and serve upon Plaintiffs an answer, showing cause why the relief prayed for should not be
12 granted. At the time the answer is filed, Defendants shall lodge with the Court all records
13 relevant to a determination of the issues presented by the complaint. If Defendants contend that
14 Plaintiffs have failed to exhaust administrative remedies as to any ground for relief asserted in
15 the complaint, Defendants shall specify what administrative remedy remains available to
16 Plaintiffs. If Defendants waive or concede the issue of exhaustion, Defendants shall so state in
17 their answer.

18 (3) Plaintiffs may file a response to the matters raised in the answer within twenty
19 (20) days after receiving the answer.

20 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon
21 the filing of the response or upon the expiration of time to file a response.

22 (5) No later than the time their respective responses hereunder are due, the parties
23 shall make their determination regarding the issue of consent to the jurisdiction of the Magistrate
24 Judge and file the appropriate form. In the event any party declines to consent to the jurisdiction
25 of the Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.

1 (6) The Order Setting Initial Case Management Conference and ADR deadlines entered
2 on November 17, 2006 in this action is hereby VACATED.

3 IT IS SO ORDERED.

4 Dated: November 29, 2006


RICHARD SEEBORG
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY**
2 **PROVIDED TO:**

3 Justin X. Wang, Esq.
4 Email: lawbw@aol.com

5 Dated: November 29, 2006

6
7 /s/ BAK
8 Chambers of Magistrate Judge Richard Seeborg
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